

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

CHRIS APPLEWHITE 99-A-6852,

Plaintiff,

DECISION & ORDER

-VS-

08-CV-6045-CJS-MWP

CAPTAIN MICHEAL SHEAHAN, *et al.*,

Defendants.

Siragusa, J. Before the Court is Plaintiff's motion (Docket No. 32) seeking reconsideration of a portion of the Court's Decision and Order (Docket No. 31). For the reasons stated below, Plaintiff's motion is granted.

Since the Federal Rules of Civil Procedure do not expressly provide for motions for reconsideration, such a motion may be construed as a motion to alter or amend judgment under Rule 59(e) or Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989). "The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

Plaintiff contends that on September 23, 2009, prior to the expiration of the deadline for responding to Defendants' motion to dismiss, he sent correspondence to the Court seeking an enlargement. The Court has retrieved Plaintiff's letter, dated September 22, 2009, and postmarked September 23, 2009. The letter does contain a request for an

enlargement of time to respond to the pending motion to dismiss. Consequently, the Court modifies its prior Decision and Order as set forth below.

Further, Plaintiff's letter dated February 10, 2010, seeking an additional enlargement of time on both the motion to dismiss and the pending motion for summary judgment, was received by the Court on February 16, 2010. For the reasons stated in that letter, the Court will enlarge the time for Plaintiff to respond to all the outstanding motions. Accordingly, it is hereby,

ORDERED, that Plaintiff's motion (Docket No. 32) for partial reconsideration of the Court's Decision and Order (Docket No. 31) is granted and the Decision and Order is modified to remove the decretal paragraph stating, "ORDERED, that Plaintiff's *ex parte* request for an extension of time to respond to Defendants' motion to dismiss (Docket No. 12) is denied without prejudice to submitting the request on motion as required by Rule 6"; and it is further

ORDERED, that Plaintiff shall have until **April 23, 2010**, to file any responses to Defendants' motions to dismiss (Docket No. 12), for summary judgment (Docket No. 20) and motion to vacate the Clerk's entry of default (Docket No. 26); and it is further

ORDERED, that the Court will take the pending motions under consideration as submitted on the papers without oral argument.

IT IS SO ORDERED.

Dated: February 19, 2010
Rochester, New York

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge